



CALISTA CORPORATION
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Via Email to soderlund.dianne@epa.gov and allnutt.david@epa.gov

Dianne Soderlund, Director
U.S. Environmental Protection Agency, Region 10
Alaska Operations Office
222 W. 7th Ave., #19
Anchorage, AK 99513

R. David Allnutt, Director
U.S. Environmental Protection Agency, Region 10
Office of Environmental Review and Assessment
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

Re: Request for Consultation with Calista Corporation regarding the EPA's comments to the USACE on the Donlin Gold Project DEIS

Dear Ms. Soderlund and Mr. Allnutt:

Calista Corporation ("Calista")¹ would very much appreciate the opportunity to consult with U.S. Environmental Protection Agency, Region 10 ("EPA") senior management, to discuss (a) the Donlin Gold Project ("Project"), (b) the EPA's May 31, 2016 comment letter filed regarding the Project Draft Environmental Impact Statement ("DEIS"), and (c) the go forward process to resolve the issues raised by the EPA, as a cooperating agency during the NEPA process for this Project. The requested consultation is critical to provide Calista with the opportunity to meaningfully present relevant information to address negative comments that may hinder the development of the Donlin Gold Project under Alternative 2 of the DEIS. If the Project is not developed, it will substantially impair Calista's ability to fulfill the very intent and purpose for which Alaska Native Corporations ("ANCs") were established under the Alaska Native Claims Settlement Act ("ANCSA"), to protect and advance the economic, social, and cultural interests of our shareholders.

¹ Calista Corporation is one of the twelve land-based regional Alaska Native Corporations specifically created by Congress in 1971 with the passage of the Alaska Native Claims Settlement Act; 43 U.S.C. § 1601, *et seq.* Calista's Region is located in the Yukon-Kuskokwim Delta region of Southwestern Alaska.

The Federal Government settled its land claims with Natives in Alaska differently than with Natives in the Lower 48. ANCSA created Native regional and village corporations to hold land and to invest cash settlement money for the benefit of their Native Alaskan shareholders and their descendants.² Village corporations were given land surface rights in settlement of their Native land claims, while regional corporations were granted the subsurface rights of their own selected lands and those of the village corporations within their region.³ If EPA actions will impact ANC-owned Native land or related water or resources, it must consult with the applicable ANCs if it wants to ensure that its decisions properly take Native interests into account. **As the owners of the land surface and subsurface rights, ANCs have the most direct and tangible interests at stake related to those areas.**

In Executive Order ("EO") 13175,⁴ *Consultation and Coordination with Indian Tribal Governments*, the President required federal agencies to implement effective, accountable processes to ensure meaningful and timely consultation with tribes, on a "government to government basis" during the development of regulatory policies or projects that may have tribal implications.⁵

In accordance with this mandate, on May 4, 2011, the EPA issued its Policy on Consultation and Coordination with Indian Tribes ("2011 Policy"). Tribal consultation is intended to assure meaningful tribal participation in planning and decision-making processes for actions with the potential to affect tribal interests. Alaska Native tribes are specifically included within the EO's definition of "Indian tribe." Congress specifically expanded the EO tribal government protection to ANCs by expressly directing the Office of Management and Budget ("OMB") and all Federal agencies to consult with ANCs **on the same basis as tribes** under EO 13175.⁶ In the EPA's Policy, the EPA states it "takes an expansive view of the need for consultation in line with the [EPA's own] 1984 Policy's directive to consider tribal interests whenever EPA takes an action that "may affect" tribal interests."⁷ In the consultations, tribes [and ANCs] may provide input to EPA and the EPA is to provide feedback to "explain how their input was considered in the final action. This feedback should be a formal, written communication from a senior EPA official involved to the most senior tribal [or ANC] official involved in the consultation."⁸

² 43 U.S.C. §§ 1606, 1607.

³ 43 U.S.C. § 1613.

⁴ Issued November 6, 2000, by President William J. Clinton.

⁵ *Id.* at Sections 2 & 5.

⁶ Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div H. Section 161, 118 Stat. 3, 452 (2004), as amended by Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, Div H., Title V. Section 518, 118 Stat. 2809, 3267, codified at 25 U.S.C.A. § 450 note (emphasis added). Furthermore, ANCs qualify under the EPA's 2011 Policy per the definition of "Tribe", pursuant to the Federally Recognized Indian Tribe List Act of 1944.

⁷ 2011 Policy, at Section II, p. 2,

⁸ *Id.*, Section V(A)(3) & (21'4), p. 5.



1. **Meetings** - Calista requests that our first meeting focus on our concerns with EPA's DEIS comment letter. The meeting could be either at Anchorage, Alaska or in Seattle, Washington.
2. **Level of agency staff** – Calista requests that consultation meetings include both Calista and the directors responsible for the EPA's comment letter and working staff. For Calista, Andrew Guy and June McAtee would attend the meeting. For EPA, we would like the staff to include, at a minimum, Diane Soderlund and David Allnutt.
3. **Documentation** - Calista prefers that the specific content of our consultation meetings that is verbally shared be confidential. However, we ask that EPA document in its ROD documents that consultation has occurred by listing the dates of the consultation meetings.
4. **Issues** – Consistent with the EPA's Consultation Policy, Calista requests Calista be consulted on EPA's comments and decisions related to "any activity that may substantially affect ANCSA Corporation land, water areas, or resources. Some issues that warrant discussion include:
 - EPA's rating: EPA rated the project "EO-2" (Environmental Objections-Insufficient Information). Donlin Gold has worked diligently and in cooperation with ANCs and local communities to reduce impacts. Thus, it is concerning that EPA would still have significant objections to the Project.
 - Subsistence:
 - EPA's cover letter implies that it believes the BLM subsistence analysis (preliminary ANILCA 810 analysis) over the USACE's, yet EPA provides no basis for that position.
 - The cover letter states that EPA heard concerns about impacts at the public meetings but did not acknowledge that there were many positive public comments. Why does EPA's letter only focus on perceived negative impacts to subsistence, as opposed to a more balanced and representative approach to the totality of the public testimony?
 - EPA's specific comments on subsistence appear to be written by someone completely unfamiliar with Calista's local Alaska Native hire requirements and Donlin Gold's past successful history of Calista and The Kuskokwim



Corporation shareholder hiring, which reached over 90% of the exploration workforce. (See EPA comment table, Section 3.21, page 79).⁹

- Similarly, some of EPA's comments on the health section also appear to be written by someone unfamiliar with the Project. Moreover, some of the comments are both uninformed and offensive. (See EPA comment table, Section 3.22, page 91)¹⁰

- Environmental Justice: EPA's comments on Environmental Justice are alarmist and can only have been written by someone unfamiliar with the Project and the Yukon-Kuskokwim region. (See EPA comment table, section 3.19, pages 77 -78). Particularly egregious are statements that imply a cash economy and subsistence economy cannot co-exist when we know that subsistence in fact relies heavily on and co-exists with a cash-based economy in the Yukon-Kuskokwim Delta.
- Development of Private Land: We welcome the opportunity to discuss with you the Project's location on Calista Corporation and The Kuskokwim Corporation ANCSA lands that were specifically and intentionally selected for mineral development to anchor a regional rural economy; the ANCs are true partners in its development. Our partner, Donlin Gold, has taken a thoughtful and steady approach toward development – not rushing into it; ensuring a well-thought out project design cultivated through more than 20 years of baseline data collection, feasibility studies, and consultation with communities in our region. We would like to share with you the positive changes that Calista shareholders experienced during Donlin employment, and the reality of the affected villages' current health and economic status.
- Topics for future meetings may include, for example, EPA's participation as a cooperating agency under any of these actions that could affect Calista:
 - i. NEPA/EIS – comments on the EIS; supplementation of the EIS
 - ii. ANILCA Section 810(a) Analysis of Subsistence Impacts – scope of the 810 analysis and mitigation
 - iii. the NHPA Section 106 Programmatic Agreement

⁹ See, e.g., EPA comment table, Section 3.22.4.2.1, p. 87: "What are the requirements of jobs that would be available to ANs? What are the current abilities of ANs to fill these jobs, what training would be needed? Has there been an effort to determine whether or not ANs would want to take these jobs, including whether changes in lifestyle would be acceptable."

¹⁰ See, e.g., Section 3.22-74, p. 91: "Furthermore, while chlamydia may be treatable, the high prevalence of STIs may indicate behaviors that increase the likelihood of transmission. Other STIs could blossom in this environment." Was that a consideration in the building of the Trans Alaska Pipeline or other projects of this magnitude?

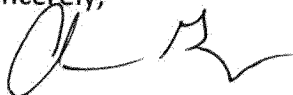


- iv. Section 17(b) public easements
- v. Mitigation

5. **Follow-up** – Each of the EPA/Calista consultation meetings should end with a list of next steps, with a date for each, even if it is just a phone call or email. We request ongoing consultation on these or similar topics during the framework revision of the Donlin DEIS.

Calista sincerely appreciates the EPA engagement in this important consultation. We look forward to working through this process with the EPA team.

Sincerely,



Andrew Guy
President & CEO



June McAtee
Vice President, Land & Shareholder Services

cc: Mark S. Jen, EPA, Region 10, Alaska Operations Office,
via email to jen.mark@epa.gov



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